

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ,कटक

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं/ITA No.108/CTK/2023

(निर्धारण वर्ष / Assessment Year :2014-2015)

Subash Chandra Bardhan, 1, Balaramgadi, PO/PS: Chandipur, DIST: Balasore-756021	Vs	ITO, Ward-2, Balasore.
PAN No. :AFEPB 0876 L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri P.K.Mishra, Advocate and Shri Himansu Bhusan Jena, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.C. Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	12/06/2023
घोषणा की तारीख/Date of Pronouncement	:	12/06/2023

आदेश / ORDER

This is an appeal filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 24.11.2021 in Appeal No.ITBA/NFAC/S/250/2022-23/1049793637(1) for the assessment year 2014-2015.

2. It was submitted by the Id AR that the assessee is an individual, who derives income from trading in fish, which is perishable item. It was the submission that the assessee has originally filed its return of income and on account of non-availability of books and had disclosed its turnover at Rs.45,26,980/-. While filing the original return, the assessee had adopted the provisions of Section 44AD of the Act. Subsequently, the assessee had filed a revised return showing total turnover of Rs.1,10,65,800/- and the said revised return was accompanied with audited accounts which was specially qualified auditors. It was the submission that the AO did not accept the return of income wherein the

income as offered at 3.27% of the total turnover and the books of accounts being not available, the percentage of income declared by the assessee in the revised return has been rejected. The AO had adopted @8% of the total turnover of Rs.1,10,65,800/-. It was the submission that the estimation was done without applying any comparative case. It was submitted that the percentage of the net profit taken was high and the comparative case as decided by the coordinate bench of this Tribunal was in the range of 1% to 2.5%. It was the submission that the estimation of the income may be reduced.

3. In reply, Id. CIT-DR submitted that the assessee has not complied with the notices issued by the AO. It was submitted that the AO had applied 8% by adopting the same percentage as disclosed by the assessee in its original return. It was the submission that the estimation as done by the AO is liable to be upheld.

4. I have considered the rival submissions. A perusal of the facts of the present case show that the return filed by the assessee itself is not revised return. In any case, the return discloses higher turnover of Rs.1,10,65,800/-. This being so, the AO was right in adopting the higher turnover for the purpose of estimation. Coming to the issue of estimation, it is noticed that the AO has adopted 8%. Even if the estimation of the revised return is considered, the AO had adopted same percentage as adopted by the assessee in filing its original return, it is understood that the original return had been filed on presumptive basis u/s.44AD of the Act. The provisions of Section 44AD of the Act specifically provides of

estimation. In the present case, the return has exceeded the presumptive basis turnover required; therefore, the provisions of Section 44AD of the Act itself cannot be made applicable to the said turnover. A perusal of the decision the coordinate bench of the Tribunal, in perishable item as fish, shows that net profit adopted by the coordinate benches vary between 1% to 2.5%. However, it is noticed that the assessee has disclosed 3.72%. In these circumstances, as the accounts of the assessee have been rejected, and the rejection has been upheld by me, therefore, I am of the view that the net profit of the assessee should be taken at 3.5% of the total turnover.

5. In the result, appeal of the assessee is partly allowed.

Order dictated and pronounced in the open court on 12/06/2023.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 12/06/2023

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Subash Chandra Bardhan,
1, Balaramgadi, PO/PS: Chandipur,
DIST: Balasore-756021
2. प्रत्यर्थी / The Respondent-
ITO, Ward-2, Balasore
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack